

**QUESTIONS & ANSWERS FROM THE FEBRUARY 2, 2008**  
**SIX NATIONS MRP COMMUNITY MEETING –**

**DRAFT SIX NATIONS MATRIMONIAL REAL PROPERTY LAW**

**[The Facilitator explained that the meeting would pick up at the place in the document at the last community meeting which reviewed in detail the Rolling Draft document]**

**PART 9: ENFORCEMENT**

**QUESTION:** Is there an appeal process?

**RICHARD:** It is not addressed separately; it would probably come in this section. Is what you're saying is there needs to be an appeal process?

**COMMENT:** I think it is a great idea to work with other communities, so they can share the expense. Of course this is not an everyday thing, they may only come up once or twice a year, but you have to have the committee in place and it is shared with everyone then it would be like having a traveling judge. **It is a great idea to work with the Iroquois Caucus or anyone else who wants to come in and share the expenses.**

**RICHARD:** The Iroquois Caucus is one model, but it could also be a Regional Ontario wide type of thing.

**AVA:** At the Iroquois Caucus meetings we have already brought the subject up with the other seven communities, that includes Oneida, Tyendinaga, Wahta, Akwesasne and Six Nations and also includes two from Quebec, Kanesatake and Kahnawake. We already discussed the prospect of having an Iroquoian Family Court that would travel to different communities, which means that if you have a dispute in our community it would be people from different communities that would come in and be like the tribunal that would oversee it. All though there is a lot of inter marriage and inter relations, we thought that would be good, because it could probably be somebody that doesn't really know the people. The Iroquois Caucus has formed a Matrimonial Real Property Law Working Group, which is similar to the Working Group on Border Crossing. One of the processes in the Iroquois Caucus is to form working groups with representatives from each community, to focus on these different issues. I am sitting in on that with Helen as a member of the MRP working Group, as an alternative and Jan Burning is also sitting in on it.

We had one meeting and we discovered that we are much further ahead then the other communities, with the respect to developing our own MRP Law. In fact some of the communities have done nothing. They have asked if they can use the rolling draft format, that you all have a copy of. The point they made is that if we are going to have a Iroquoian Family Tribunal, one that is going to travel around, then our laws should be very similar. So in the end they might be very much the same. They are going to use the same format that we are using and they are going to start developing their own law, in their communities. Then maybe we are going to look at them altogether. The Iroquoian Family Tribunal would probably be part of that enforcement section that we are going to be looking at jointly. I just wanted everyone to know that steps are being made, if that is what we think is going to work best for us.

**COMMENT:** I would think that **the Six Nations Land Management Department should have something to do with this**, because they are the ones that use the process in establishing who owns the land. They could have papers there that when they get a land transfer, that it is in both names and to what the laws are pertaining to. They could be given a sheet of paper to describe what is going to happen to that land, in case of a break up.

**HELEN:** As the Chairman of the Social Services Committee for the next few years, I have attended my first meeting and found that Social Services is trying to look at an alternative dispute resolution process for child welfare issues. I am not sure what work they have done, but I am sitting here thinking that it would be really good if we could develop an alternative dispute resolution process and we could use it for all the different issues in our community, if we could just have one process and use it for everyone, instead of everyone having their own thing. I am going to find out what I can, as to what Social Services has done up this point.

**RICHARD:** The alternative dispute resolution process is a form of a court. It is just a third party that is vested with the authority to make a decision when there are disputes. We were settling disputes long before the white man came here and there are all kinds of alternatives out there. There are mixes that are being used across the country. Even the justice system is starting to use sentencing circles, which is more like an aboriginal style of dispute resolution. There are all kinds of options and alternatives out there that can be looked at.

**QUESTION:** I would like to know if they didn't enforce it and nobody abided by it, is it really a law - is it really binding, if no one wants to abide by it?

**RICHARD:** If you are non-native living in the province and you have a dispute about the family home, someone will go to court and get an Order and they will have a sheriff or someone charged with going in and enforcing that. In their system, they have enforcement. The question is how do you see that (enforcement) being done, once we have the law in place?

**COMMENT:** They would have to get a lawyer, on the reserve to deal with this. If they wanted to go the white man's way, they would go to the courts or the lawyers off the reserve, but that is their choice. But they both have to agree where they are going, because you can't have the man here and the woman in Brantford, so they would have to hire their own lawyer or mediate some place on the line.

**RICHARD:** To be clear, we are saying this is the law in this community, even if they went off the reserve for a non-native lawyer, Provincial law doesn't apply here. This is the law that will be in place, so it has to be in this system that is enforceable and it is the law that any lawyer will have to look at, that will have to be followed.

**LONNY:** You will **probably have to have the Six Nations Police on board** to enforce our law and you are going to have to have some sort of Six Nations Court Administration to issue the process. There is **going to have to be some political talks with the province, about we have a law and we have a mechanism for making orders and we have to have the province on board to help us enforce any orders**. If it involves somebody not following through with the law, then the alternative is short terms of imprisonment. You **have to be able to respect that process for putting anybody in jail for short periods of time, to impress upon them that this is the law and it has some teeth behind it**. All of those things have to be developed. You **would have to go over the things with the police to make sure they are fully aware of the process and how to enforce it and what result is when people disobey an order. There has to be that kind of mechanism put into place**.

**AVA:** Further to that, I have tried to call our Chief of Police the other day, to get him involved in this process, but he will not be in until Monday. We want to get him involved, right from the get go on how we are going to enforce this. On enforcement, if we are going to enforce this we are going to have to enforce it right off the bat. We all know what is happening with the residency by-law, it was put into place and it wasn't enforced right off the bat and now people are just disregarding it. We as a community have to take some really strong steps to make sure that it is enforced. A lot of our people work for the Band Council and I know in some cases I know that if it is a child support case, steps can be taken garnishee the employees wages if they are not paying their child support. The other thing we may come to is services will not be provided, unless you comply with the law. I don't know if we can do that, but these are polices and penalties we have to establish as a community. They have to be enforced right off from the get go, if those are the penalties we are going to make. That leads into the next questions, what will be the penalty for violation of the law. If we establish strong penalties, like saying your wages will be garnisheed or you will not get any services from our community, then we really have to stick by it. If people know we are going to be serious about it, then they will comply.

**LONNY:** Presently if you look at our residency by-law, it is a fine and/or imprisonment. Unless there are some other new ideas, those are the ones that I am familiar with.

**RICHARD:** The model around this area for off the reserve is a penalty of six months?

**LONNY:** Yeah, around six months. You also have to look at that, for example when parties own the Matrimonial home jointly and there is a marriage break up and the tribunal would decide one spouse has the house, but has to pay certain amount of money to equalize the other spouse who does not get possession of the house and the spouse decides not to pay. You **would have to have Lands Department on board to say there is an Order of the Tribunal and we are going to respect them and we are going to put the property in one spouses name - but there is a recognition that he or she has to pay the other.** There is a lot of detail that has to be thought out in that way. **All the other departments have to be on board, Lands and Membership as well, before you can start looking at the other route of imposing fines, and also using the ultimate - taking away someone's freedom for a short period of time.** Everybody has to be on board.

**RICHARD:** So, it has to mesh with the existing programs and services in the community to make it work.

**AVA:** We have some people here who weren't at our previous meetings, so I just wanted to say that this law we are developing is only going to be used when people can't agree among themselves. If you come to your own agreement, then you don't need to use this law. It is only there when people can't agree. If they choose not to use our law and go to a provincial court system to get their property divided then that is their choice, but what ever decision is made in the provincial courts will not be implemented on our community, because we say that the provincial law has no jurisdiction here. So this is just like a last kick at the can, if people can't come to an agreement that is when our law would kick in. I have talked to Hubert Skye and he is going to come to our next MRP meeting, because we want to know how marriages and break ups are dealt with traditionally. We can get his expertise on that from him, so we are going to look at that too.

## PART 10: TEMPORARY/INTERM EXCLUSIVE POSSESSION ORDERS

COMMENT: I think that you **should point out, that a spouse is not just the wife**. It can be the other way around and I think that needs to be clearly put in there. If someone married into this reserve and they got status and they divorced, then possibly a non-native would get that home. I am not saying anything about children, for me children once they are older they are no longer children and that shouldn't be an issue at that point, but I think that needs to be clear about the non-native having that matrimonial home.

### [Include Spouse In Definitions]

**RICHARD:** The spouse is a definition thing; we can make sure it is covered under definitions when we define the term spouse. The second point, because prior to 1985 with C-31 legislation, what it did was freeze the status of anyone who was married before that time - a non-Indian woman married an Indian man - she gained status and if an Indian woman married a non-Indian she lost her status. 1985 was the reason for non Indian women keeping the status they acquired by marrying Indian men. They said anybody who is on the Membership list continues to be on it, but no one gains or loses status anymore. **Just to be clear, are you suggesting those non-Indian woman who gained status are not eligible to live in the house, is that what you are saying?**

**COMMENT:** With my way of thinking, the only way they became an Indian is because they married in. If you don't want that relationship anymore, why should you not give up every right? That is my way of thinking and I know others think the same thing and I would like to make that as part of this.

**QUESTION:** What about when an Indian man and a white woman marries and the Indian man dies first? Do you kick her off the reserve after 40 or 50 years, of making her home here when she is 80?

**RICHARD:** What is the answer you prefer?

**COMMENT:** I think she should be allowed to live there until she dies and when she dies, either her children inherit the land or it goes back to council.

**RICHARD:** What she is referring to is called a Life Estate; it actually exists in some of the other models. The Aundeck Omni Kaning First Nation model, which we are going to copy for you, has in their law very clearly, a right to continue to live in the Matrimonial home until that person dies.

AVA: You can see right now that **we have disagreement on that and some people say that they should be striped of their status if they divorce or their husband dies and then we have other that say they should be able to stay here**. That is getting into discussions about membership, so you see how MRP is going to tie into everything, because what we are talking about right now is a membership issue and in order to resolve that, we have to develop our own Membership Code. Right now all of our membership is done through the Indian Membership at Indian Affairs, which means we have to follow the rules that are outlined in the Indian Act and Bill C-31. We have said to Indian Affairs many times, we are using this discussion when we are talking about the Border Crossing, we are talking about getting our own Identification Card,

which is also going to involve the whole membership, because who is going to get a card. That is another discussion we have to get into, is who is going to get a card. We have to determine who our citizens are, but we are not at that point yet because we do not have our own Membership Code. So you see we have a lot of work to do as a community, this could probably be the precursor to developing other laws and us deciding what we want to do as a community. We keep saying we are a Sovereign Nation and we have our own jurisdiction, but we are following a lot of Indian Affairs stuff, because we don't have anything else in place. We really have to get our socks pulled up and starting working, especially with this whole boarder crossing thing.

The deadlines are looming right now and as of January 31 they maybe giving people a harder time at the boarder, we don't know. DHS is telling us the Indian Status cards are still acceptable, but the whole passport issue is going to be here next year. One of the things we are trying to do is get our own identification cards, but we have to decide who is going to get it. Do we want to give it everybody who is on the Band List, which includes women with zero percent blood? That is what we are taking about here too, MRP, if there is a divorce, should women with zero percent blood who gained status because they married in, be allowed to stay here. Some people say yes and some people say no, these are some hard decisions we have to make has a community, if we are going to start developing our own law and exerting our own sovereignty.

**LONNY:** Bill C-31 came in, in 1985, so we have had 23 years of this application. So upon marriage nobody gains, those people married and gained status prior to that is automatically considered to be band members. According to the Indian Act you can not take away their rights. It has been 23 years those people that have been living here for all that time, they are considered members of the community if they have never ever left, even thou their marriage might have broken down. The way our Residency by-law is now, is that only people who belong to the band can live on the reserve. For interim orders, if you are going to be saying a non-native spouse should have a right in her possession to the matrimonial home if later something can happen, then she is in violation of that already, because she wasn't supposed to be here in the first place. In that respect, because of our Residency by-law you can only be making interim orders only with respect of people on the band list.

**RICHARD:** The residency by-law doesn't talk about blood quantum; it just talks about whether they are a band member?

**LONNY:** There is going to have to be further defining of that down the road, but as it presently exists, only people who are band members are entitled to live on the reserve of Six Nations.

**RICHARD:** Lonny because of your expertise, as you see on this question - is there any thing else that we would want interim orders to deal with?

**LONNY:** The only thing I see that you are talking about and I didn't think it was part of this is **the issue of custody of children**. I didn't think that this law was going to be dealing with that, because that is probably provincial jurisdiction. I am not saying it shouldn't, I am just saying the idea behind the law here was just to alleviate the problem that has developed, in regards to the land on reserves where provincial laws don't apply. Child Custody, unless it is being challenged, has always been something that was in the provincial competency to make laws on. Normally it would be dealt with separately, unless as someone suggested earlier about Social Services getting into Child Custody.

**[Need to consider Custody of Children]**

**RICHARD:** So that is something we need to discuss, if we want to include that or not.

**HELEN:** Custody is why we need to get all these different organization together, because the children, if there is a non-native spouse, the children would be entitled to the house, it is just the non-native spouse that wouldn't, so all that stuff has to come into play. We have to do our own laws, because right now we have a case where a non-native woman's husband died and because it is going through INAC, they are not allowing the children to have that house. They tell her she has to sell it. She can not give it to her children, because it is not hers to give. The children are going to be left out in the cold too, which isn't right, the kids should have entitlement to the house. What is our law going to do about that, if we are saying the non-native woman has no rights to property, then she can't turn around and give it to her children, because she don't own it. That is if the man doesn't have a will and apparently this man didn't have a will. There are all them issues to. I tell everybody to make a will.

**DAYLE:** Everything is going to be temporary on these types of orders, but there is always a lot of chattels that they can have that are attached to the land, but the chattels that the family has accumulated are something that are going to have to be discussed and decided on.

**RICHARD:** I am not sure that is going to be dealt with under the MRP Law.

**LONNY:** I didn't think it was going to be dealt with under the MRP Law, but I did see something earlier when you went through it, that you also wanted to include personal property or am I wrong in that.

**RICHARD:** These are definitions that were taken from other models that exists out there, is that Matrimonial Real Property is really normally the fixed property. It is not moveable, it is not the chattels, it is not bank accounts, those are something else that is normally dealt with under the provincial family law. Furniture and stuff that is moveable, but Matrimonial Real Property is about the house or building attached to the land.

**LONNY:** That is where the void is presently, there is no (federal or provincial) law that deals with that on a marriage break down.

**AVA:** **Matrimonial Real Property** as it is stated is just like he is saying - **the house and the land, but this is our law and it doesn't have to be the same as the legislation the government is coming down with. If we want to include chattels in that, then that is a decision we have to make.** We can include whatever we want in it - that is what we have to get our heads around. It is our law and the MRP legislation that the Feds are coming down with has specific things in it, but if we want to include all personal property, that is something we can decide.

**DAYLE:** I just want to clarify that when we are talking about this MRP Law, I know there was skepticism of when it was going to come about. The whole reason why Six Nations wanted to do it is, because if you have a mixed marriage of a native and a non-native, depending on what the legislation has that is going to be coming down by the federal Government, if they decide they are going to implement their law, then your neighbor, if they are in that situation, then the land could potentially all of a sudden not be a reserve. (*not so*) It will now belong to the non-native person and she may not be a band member. So that was sort of the idea, because there was a lot of unknowns of how it was going to be rolled out and the implementation were the reserve is going to be a spotty, where there is a reserve here and a non-native lives here then a reserve here. So, that is why we wanted to get into implementing our whole MRP law, because if you read right at the very beginning is the law will protect the land reserve base. Just getting back to

talking about the temporary interim stuff while the decision gets made on what the outcome is going to be on a situation, all I am saying is that within that family there are a lot of chattels and how are the chattels going to be decided on in the interim, until a decision is actually made.

**RICHARD:** Just to answer the one question you asked about the protection of reserve base. It was a recommendation by the ministerial representative that the reserve land be protected, that the result of this new law that the federal government is working on shouldn't result in alienation of reserve land to non-Indians. The federal government, in what they are developing has told AFN reps and Native Woman of Canada Association reps that the law won't do that. But until we see it, we do not know what is in it.

**QUESTION:** We are talking about non-natives, but would this include natives from other reserves also?

**AVA:** All we are talking about right now and I think the only ones we can talk about are Band Members, registered Band Members of Six Nations and I know there are a lot people from other reserves. We have spouses from other First Nations, myself included. All we can talk about right now, because we don't have our own membership code, are those people who are registered under Indian Affairs and it includes non-native women who married before 1985.

#### **PART 11: COMPENSATION ORDERS - - DIVISION OF MATRIMONIAL HOME/INTEREST/RIGHTS**

**COMMENT:** I think whoever lives in the house should take the children and if the man doesn't want to do it then he will have to sign a lease so that his wife can stay there until the children grow up then she has to move and he can go back in.

**RICHARD:** This is for the compensation orders, this is saying the court or tribunal whatever we have, says which spouse can live there and who can't.

**COMMENT:** Yeah, but you are taking that spouse away from the children and if the children want to grow up on the reserve, then they are entitled too.

**RICHARD:** You are taking about the entitlement to live, what this Section is talking about is a payment of compensation to the spouse who doesn't get to live there anymore.

**COMMENT:** No, you take that out of what you have to paying towards the support of the children, he would have to pay so much support and then he could take an allowance of the value of the home, what it would be rented for.

**RICHARD:** So that person would be compensated, less what the support payments would be?

**COMMENT:** That is provided they have a job, what if they are on disability or on welfare or something like that, there is going to be no payment.

**LONNY:** Strictly dealing with the home situation, whatever tribunal we are going to be using, is going to have to make an order. Weighting all the factors, one spouse will get the home and it will be registered in that spouse's name, but they will also have to pay whatever values determined for that home to the other party, so I think that is really what this is speaking about.

In respect to the children, just looking at the house for what it is worth, who gets possession of it and looking at all the factors as to who had paid for it, if there is a mortgage or a housing loan and who has been paying that. Weight all the equities and say ok it is determined that even though the house is worth \$100,000.00, normally it should be 50/50, but this party has spent a great amount of time at making improvements to the home. They are going to have credit for that and the other party is going to have to pay maybe \$70,000.00 or \$80,000.00 rather than \$50,000.00 if it was a \$100,000.00 home, all those things would have to weight into it. **If both parties have contributed to the home and one of the parties is going to get possession of it and the titled registered in their name, then they are going to have to pay the other party whatever interest the tribunal decides on that one.**

**RICHARD:** So your point on the sale of it, is **after the off-sets are determined**, adjusts the terms to the one spouse being paid?

**LONNY:** There could be, it doesn't necessary always have to be. There might some that arrive at a **fair and equitable division**. That would all have to be taken into consideration. Normally what happens off the reserve is usually the matrimonial homes have mortgages on them, so when there is a split usually it is the wife and the children who get interim possession of the home, but eventually it is sold. They buy and sell houses off the reserve very frequently, but it gets sold and the mortgages is paid off and whatever is left it is divided between the two spouses after whatever equity is in there.

**QUESTION:** What about if a person owns the home and it is freed and paid for, then he or she gets married and they have a couple of kids, then what happens?

**RICHARD:** What do you want to happen?

**COMMENT:** The Person who owns the home should keep it. But what happens to the kids and the other partner?

**RICHARD:** If the tribunal, we are talking about our tribunal in our community or an Iroquoian tribunal, rules against that person, how are we talking about the compensation then? Are you saying that they shouldn't have to pay anything?

**COMMENT:** No, I am saying that if I own the home and I got married and I had 3 or 4 kids, I think the partner should support the kids, but he certainly couldn't take my house, I already own it.

**RICHARD:** This is where the compensation part comes in. I also think what you are touching on is the, what you hear under the provincial laws that spouses are assumed to have a 50/50 share in the value, maybe that is something we need to have a discussion about, do we share that. Is that something we are going to start from?

**COMMENT:** We can't if they married a white man or white woman.

**RICHARD:** Let's just keep it with in the community for now. Do we agree from a starting point, do we assume a 50/50 interest in the home?

**LONNY:** I think what she was talking about is her and her husband lived together, they had children, but the house was always in her name and they split up. But he, because he had a good job or whatever that he made additions or improvements to the home. So you quantify that as he

spent \$50,000.00 to improve her home, so there should be some consideration for that. He is not going to get the home if that is determined that it is going to stay with her, **but he still should be compensated for the improvements that he has made to that home.** I think that is the function of the tribunal would be to make those kinds of determinations.

**RICAHRD:** Are we assuming like other jurisdictions, a couple is married and we start with a 50/50 assumption and 50/50 share in the matrimonial home?

**AVA:** I don't think it should be an automatic 50/50, I think we have to look at each case individually. For example a woman owned the home and she married a man and they never had any kids, then they divorced and he never did anything around the house he never made any improvements, but because he is her husband and they split up he figures he should get half the house. I think each case is going to be different. If he did make repairs or renovations to the house, then I think maybe there should be consideration, but it shouldn't be an automatic 50/50. Then you have to look at if there are kids involved and who is going to look after the kids. These days sometimes it is the husband, so I don't think we can just put a blanket 50/50 in there, we have to have a number of scenarios. We have to look at what all those scenarios might be and how each one of them is going to be addressed.

#### [Compensation Based On Each Case]

**RICHARD:** I think that is just simply the starting point and then the balancing off and the offsets of what you are talking about with each individual case. The starting point is 50/50 and then you move to the offsets of who contributed what to the home.

**COMMENT:** I disagree with that, I if own the house I will pay the guy to fix the door, but I am certainly not going to give him 50% of my house.

**QUESTION:** If there really was a concern, would they have not had a prenuptial agreement? That could elevate that problem, this is my house you are not going to give any of it, and if you go your gone.

**RICHARD:** Yes, that is one way of dealing with it.

## PART 12: LAND REGISTRY AND TITLE ISSUES

**QUESTION:** Are you saying that a Certificate of Possession can be registered in a native and non-native's name?

**RICHARD:** No this is just talking about Band Members.

**COMMENT:** Well I bring up the issue of the band member list again, if a non-native before 1985 got status, we now call them natives but they are not and they have no blood quantum what so ever and I think that needs to be addressed. Don't ask me how, because I don't have an answer for that unless you make a ruling for that. The other thing I wanted to talk about was that if you have put it in both spouses names, they **should have some clause in there that deals with duress.** I am saying this from experience, I have a relative who under duress had to sign over his joint property and now they are divorce and she may very well get it and she is non-native or she was before 1985.

**RICHARD:** In some of the codes I have looked at, there are sections in there that talk about that, the agreements and the documents have to be arrived at in the fair process and not under duress, so it is clear they are free and clear and have informed consent. I think that is the way to deal with it, that we should have that in there as well.

**[Full Informed Consent Needed]**

**LONNY:** Whatever approach is taken somewhere along the line, you are going to have to have Indian Affairs on board with this because it is the minister from Indian Affairs from Section 20 to 26, that deals with registering and issuing of Certificates of Possession, if they are not on board with any plan that is devised and if they are going to refuse to issue Certificates of Possession jointly, then you are going to run into problems. If the other property is saying no they want the property to stay in their name and you go ahead and administer it, they are going to turn around and sue you. The minister is going to be very reluctant to participate in any law that is devised, if all these things aren't on board and he is not willing to do that. Presently under the Indian Act system and you know how the Indian Act is the ultimate authority in a lot of matters. So you have to have the Indian Affairs Minister on side, I think on some of these things before you can even proceed. I would think especially in the registration of lands and the individual names.

**[How will CPs change from or work with the current Indian Act system?]**

**RICHARD:** How are they doing it then on other reserves without CP's? They manage to change land and sell land and they don't have CP's. The Minister has no authority there. How are they doing it, in those cases? There are a lot of reserves without CP's, just custom allotments.

**LONNY:** I honestly don't know how they operate. The only place I am familiar with is here. All of the Iroquoian Reserves except for Kanestake are all under the Indian Act system, so I don't know how those that don't participate in a CP's system operate, when there are family break downs.

**RICHARD:** Wikwemikong for example, which is a fair size reserve, there is a mix. The majority is custom allotments, there are some CP's, but they have a mixed system.

**AVA:** Do you know how Aundeck Omni Kaning deals with that, are they CP? I know their law is not being recognized by Indian Affairs and I can pretty well say 100% that they are not going to recognize ours. If the federal government is coming out with its own legislation, that is what Indian Affairs is going to follow and if it is going to be in conflict from what our law is going to follow, they will not recognize ours. I am just starting to write down here all of the areas that are getting involved that Indian Affairs has control over, Indian Lands Registry, Membership Code and Child Welfare. All of this stuff is tying in, so how are we going to handle all of this and he is right; Indian Affairs is still controlling the registration of our land and the issue of Certificates of Possession. The way our policies are right now, is you can't get a housing loan unless you have a Certificate of Possession and Indian Affairs is not going to register our CP's, if they don't recognize our law. We have a lot of work to do.

**QUESTION:** How did Henning get a Certificate of Possession?

**AVA:** Henning did not have a CP. I just wanted to know, how did Aundeck Omni Kaning deal with the issue of Certificates of Possession?

**RICHARD:** As far as I know they are no CP's or at least the majority of their lands are not CP. I have done some work with them in the past on developing of their own constitution and a lot of their transfers are just done between families. They are a small community and it is easier for them to do it, but they are customary or family allotments. It is the family who decides, if these kids go off and get married and when they come back to the reserve, what land is available and who gets in next. It is not done by Indian Affairs, it is done by them. Obviously it is more complicated with CP's.

**HELEN:** The more I hear, the more I wonder why I am sitting on this committee. Maybe in the interim we can get our law going and we have to include these different things in there some how, like CP's, Indian Affairs and all of that kind of stuff. We are going to have to make a lot of changes in our community for everything and that is going to take years. We are going to have to change our land registry and do our own land registry, do our own this and our own that and that is going to take years. Maybe we have to figure out somehow, on how we can incorporate these things into our MRP Law in the interim, so we can get this thing going. It is going to come down the pipes, whether we like it or not and we need to start working on our own. We have to figure out how we are going to have to deal with Certificate of Possession's and Indian Affairs, until we can come up with our own land registry.

**[We have a lot of work to come]**

**RICHARD:** Is registration of CP's in both spouses names something we want to review consider or adopt? What do you think of that idea? Is that a way around the problems, by registering the CP's in both spouses names? Does that help us or does that hinder us?

**LONNY:** It would make it easier if that was done, but if you are still devising a law that says it doesn't matter whose name the matrimonial home is, it is still going to be divided up on the basis of a tribunal decision of which spouse is going to have possession of it. Normally on the reserve, the matrimonial home is owned jointly by both spouses, but occasionally it is not. Still under the provincial family law, it doesn't matter whose name it is registered in, if it is a matrimonial home, then it gets divided up equally.

### **PART 13: LANDS AND ESTATES ISSUES**

**HELEN:** This is like that situation I talked about were the man dies and the non-native spouse under INAC rules, has to sell it and she can't give it to her kids. She can't own it to give to her kids. Can we not say in our law, that the non-native spouse can give it to her kids? We can make that in our law and I think that is what we need to do.

**RICHARD:** So we are talking **about two scenarios, making sure we cover where both spouses are native and band members and where one spouse is non-native.**

**HELEN:** I just wanted to say I know he/she is not supposed to be here in the first place, but they are here. The kids are entitled to the house, as long as they are children of the man and the woman. We can make that our law, the non-native spouse whether it be a man or a woman, they can leave it to their kids.

**QUESTION:** Who is selling it, if she doesn't own it?

**RICHARD:** INAC will take over the roll as the administrator, if the person doesn't have a will. If a person dies and doesn't have a will, INAC steps in as the administrator of the estate and they sell it.

**COMMENT:** That should be our duty to sell it. The children are entitled to part of that land and the wife would get half and the children the other. That is what my mother went through, she was entitled to a third and the six kids got so much.

**RICHARD:** Another example where Indian Affairs is involved with the Indian Act regulations for Intestate – where a person does not have a Will.

**COMMENT:** I agree in regards to giving the property or the house to the children, but I think also that there should be restrictions to that person, so that she can not sell it to another non-native person.

**RICHARD:** There are restrictions to selling reserve land to non-natives anyways, but we can make sure that is in there.

**[Ensure non-natives cannot sell reserve lands]**

**LONNY:** Off the reserve normally if his spouse doesn't get it upon his death, there is another piece of legislation called the Succession Law Reform Act. For example, if he Willed his house to his girlfriend and disregarded his wife and children then that law would kick in and say no that can not be done, because he has obligations to his family. This has to be addressed here, because the title spouse makes a Will and gives the property to his girlfriend and totally disregards the wife and children or he makes a Will and gives it to just one of the children and total disregards his spouse. These issues have to be addressed in here, as to what a tribunal is going to be doing upon the death of one of the spouses, so it has to be considered, otherwise you would get an inequitable results in a lot of cases. Normally the Family Law Act deals with what happens between spouses that are alive.

**[Need to ensure no inequitable results – similar to the Succession Law Reform]**

**AVA:** So if a person dies and he has a will does that take precedence? Is that what is followed? Say if the man dies and has a girlfriend, but still also has a wife, but he leaves the house to his girlfriend in his Will, whereas his wife is still his legal wife, so does the will take precedence?

**LONNY:** Normally a Will would take precedence, but under the Indian Act now, there is something so that the Minister can overrule that Will and say the man didn't provide adequately for his spouse and children.

**AVA:** So his legal wife and kids are out in the cold, because he names his girlfriend in his Will.

**LONNY:** Yeah, but there is provision in the Indian Act, where the Minister can override that. There has to be something in here too.

**RICHARD:** So we are going to have to look into that and maybe seek your advice on that, to make sure everything is covered.

**[Ensure succession take care of families]**

**QUESTION:** So in other words, you can leave your property to who you want? If I wanted to leave it to one of my kids, they could overrule me because I didn't take care of all 10 of them?

**HELEN:** I know of a case in our community where the man did exactly that, he left the house to his girlfriend and the wife and the kids are contesting it. It is going on like 15 years now and nothing has happen with it and the house is going to wreck and ruin.

**LONNY:** Like I said, you can leave your property to whomever you want to in a Will, but sometimes what you do is inequitable, you shouldn't be allowed to do that because if you have a wife and children who are dependent upon you, then they are dependents. If you just go ahead and totally disregard them by a Will that is not fair is it? There has to be something built into this to address that inequity.

**CARL:** My question is a Power of Attorney, if they didn't have a will and you have a Power of Attorney come, do we have to put something in place where they couldn't overturn that, as a Power of Attorney makes decisions?

**RICHARD:** I think they are two separate things, a Power of Attorney is what you give to someone when you are incapable of making the decisions and a Will kicks in when you die.

**LONNY:** Power of Attorney is you are only Attorney of that person, while that person is alive and once they die that Power of Attorney is no longer enforced.

**RICHARD:** I think what Lonny was talking about is that there maybe cases, even with a Will where a court of competent jurisdiction will take a look at that and say it is not fair. Example that was being used, if a man who had a dependent, especially children and left everything to a third party, the court might say that is inequitable, he still has an obligation to his family and they will overrule that.

**CARL:** If you come up with such a law, would it be retroactive back or would go from that day forth? Is that how we would proceed on that?

**RICHARD:** Normally that is how laws are developed. You will see in there, that there is a coming into force section and it will need to say that this will come into force on such a day. Sometimes laws will say that this will come into force 6 months later or a year later to allow you time to develop regulations, rules and processes.

## **PART 15: COMING INTO FORCE**

**COMMENT:** I would say that we need a couple of years to get this under our belt to get it straighten out, but if we set a date like 2010 we can be working towards that.

**LONNY:** What is the timeframe on the law that is coming down form the Federal Government, on their amendments?

**RICHARD:** Right now the Bill that they just passed on Tuesday is C-21 which is a Bill to amend the Canadian Human Rights Act. I was just in touch with the clerk of the Committee yesterday and the next Bill to come up is C-30, which is the Specific Claims Act, they think that is going to go fairly quickly. Normally it is at second reading and they will hold Standing Committee hearings which take months and then it goes into the Senate, which could take

another month. The next Bill after that we are being told is the MRP Bill, it doesn't have a number yet. So we are looking at probably the earliest is a month that they could introduce it, but everything of course is contingent on an election. The Federal budget is due the 3<sup>rd</sup> week in February and what I am hearing in Ottawa is the Liberals are going to vote against the budget. The budget is a vote of confidence, which means if it loses the government falls and there is an election. If there is no election, my guess is about a month from now they will introduce the MRP Bill and it will take about a month or two months to get through.

**LONNY:** Is the First Nations across Canada, generally opposed to it or are they supporting it?

**RICHARD:** Indian Affairs will take the position that AFN was consulted and AFN is saying they weren't consulted. AFN has been briefed on at least two versions of what is in the Bill. Most First Nations are taking the position that they haven't been consulted because of the Haida Rules; there is a duty to consult now, before the Federal government enacts legislation or does anything that can affect Aboriginal Treaty rights. There has been no real gauge right now to say if First Nations are for it or against it, because there hasn't been non real consultation with First Nations.

**LONNY:** So it could be sometime then.

**RICHARD:** If there is opposition to it. If there is are 100 First Nations who apply to appear before the Standing Committee and they all oppose it. It is likely the Standing Committee and Opposition will say we are not going to pass it and they have the majority in terms of the Standing Committee, they could block it so that is a possibility.

**LONNY:** With an election, would all present Bills would die on the table?

**RICHARD:** Everything dies on the table upon an election. If the Conservatives got back in, they would have to reintroduce it. If the Liberals get in with the Minority, they have all ready said they are prepared to work with First Nations and work on a First Nations agenda, so that sounds more positive for us.

**QUESTION:** Can the Office of the Trustees take over native person affairs on the reserve or does the Indian Act override.

**LONNY:** Presently the Indian Act overrides that, but those sections have to do with competency. They are generally unknown and even Indian Affairs doesn't step in to enforce them on a lot of cases. Presently the Minister has to consent to the Public Trustees stepping in, but a lot of the times they just ignore the Minister of Indian Affairs and just go ahead and do it. It isn't the Indian Act that with respect to in competency of Indians, the Minister has first decision.

**COMMENT:** So maybe at some point down the road, that could come into play with this law.

**QUESTION:** How long will it take for the Iroquois Tribunal to take effect?

**AVA:** It is something that the other communities have to agree and we have to agree that is what we want in place too. It has to be an agreement of the 7 Iroquoian communities, who are now coming together has the Iroquois Caucus, whether we want to establish that and we are now just starting to talk about it. There is no deadline as to when it is going to take affect.

**COMMNET:** I think this law should come into affect when they get the committee going.

**AVA:** When we started doing this we said we were going to take the time and make sure we do it right. If we start putting a deadline in there, what if we don't have it done by then? Then we have to figure out how as a community going to ratify this law. How are we going to approve it? I think we are going through that process right now with the whole land claim offer. We have to figure out how the community and a good majority of the community is going to accept this law and ratify it. The community has to approve it before we can start implementing it and that is going to take a long time. I think the question here is, once we do get the law and everybody agrees and we say ok this is the Six Nations MRP law, when is it going to be implemented? I would suggest that it does take six months to a year before it takes affect, so everybody knows this is the law and in six months this is what is going to happen if there is a break up in a marriage. That is a decision we have to make, how long do we want to give before telling people this is the law and read it, be aware of it and understand, because it this is what is going to kick in.

**COMMENT:** Well I would like to withdraw my 2010 motion.

**HELEN:** I just wanted to say that Council has set up a Decision Making committee and we are going to sit down and look at different ways that we can ratify decisions. They are also doing that at the main table. We haven't met yet, but we are going to be meeting and everybody is just throwing ideas out there, on how can we do it. Hopefully we will come up with something.

**COMMENT:** This is just an idea too. I know that when we have community meetings, there is not a lot of people that come out unless it is something major and you still don't get everybody. We have Councilors in every district; could we not have a door to door handing out the information? A couple of people go to every house hold and at least you would get answers from everybody. You would also have the problem of the people who live off the reserve, so you would have to do something about that. Don't ask me about that, because I don't know where they all live.

**HELEN:** We have with this MRP committee a list of focus groups; we have district meeting and different things. The big question is I have asked is, how do you measure the response at these informal meetings? We have to stand up and say whatever percentage we decide on, that 60% of the community agrees or if we say 75%, whatever we put there we have to be able to stand up and say that, but we have to back it up. A lot of times we have community meetings and there will be 30 people there and 10 people get up to speak and everybody is walking around the community saying the community said, but the community is not 30 people. All of these informal things that are being proposed, we have to come up with some way to figure out what kind of official recording mechanism are we going to apply, so that we can say this many people agreed. Right now the way we do that is through voting, because you can count the votes.

When it comes to a referendum, everybody just cringes when you use the word referendum. A referendum is when you are making a political decisions and if people don't like to vote in a referendum, does that mean people don't want to come out and tick off I agree or disagree. This is a community decision; this has nothing to do with politics. I don't see why people wouldn't want to come out and do that. It is not like voting for an elected system, you are making a decision in the community. As far as I am concerned and I don't know if anybody is going to agree with me, but the only way we are going to be able to record any type of decision, is we are going to have to have a system where people are going to come in and tick off agree or disagree and then count them. Otherwise you really have no way to record anything. That is things I am thinking of anyway.

**RICHARD:** There are some other options that have been used. Several years ago when Akwesasne was involved with the Federal Community Based Self-government negotiation process, one of the first stages the Indian Affairs required was that the community show that it was supportive of that community entering into the negotiations. Akwesasne like the Six Nations of the Grand River has the dynamic of the split between Band Council and the Confederacy supporters. Of course the Confederacy takes the position that they don't vote and we are not going to participate in any kind of referendum. What was accepted by Indian Affairs, for those that voted they held a ratification, but they also accepted the confederacy saying we won't vote but we will have an internal discussion and we will give you a statement that we support it. That is what they did - there was no recorded vote, the confederacy met they gave the Federal government a statement saying we discussed it as confederacy and we support the community being involved. There are some other options than simply having everyone vote and that is a real life example that has been accepted. I just wanted to throw that out there for your information.

### **NON-LEGISLATIVE OPTIONS (Housing Policy, Family Violence, Access to Justice Services)**

**COMMENT:** When a couple breaks up and the one that leaves can get a room real fast or they can go to relatives, so I think this isn't necessary. Also they have the women's shelter and they have the men's shelter and they can stay there for six weeks and then they have a housing unit where they can stay for two years while they are making changes. So, I don't think this is necessary.

**LONNY:** I agree, I don't think it is necessary. Of course if the Housing Department wants to build in something like that, then that is up to that department. Here in Southern Ontario, we are fortunate to have alternative means of accommodations in situations like this. It might be temporary, but it is always so tough now to have money for the programs that we do have. We are always trying to provide houses for our members and you don't want to be taking away money that might be needed otherwise. I would just keep it in the legislation the way it is.

**HELEN:** I just wanted to say that Housing already has emergency housing, but it is for people who are getting burned out. As a Band Councilor I get a lot of requests from people, mainly women, wanting emergency housing like that if they left their husband or something happened. We just don't have it; we already have a 1500 housing waiting list for regular housing. I don't think it would be fair to put somebody in front of those people. I don't think we can really deal with this issue either.

**COMMENT:** If you are going to start to get into issues of family violence, then you are going to have to start putting in the issues of drugs and alcohol and all of the other things. There are services already in place for all of those and it is up to the individual to access those services.

**RICHARD:** We are not talking about putting this into the law, that is why it is called non-legislative. But it is a complete community and it is a complete system and these are the things that are talked about as contributing to a marital breakdown. If there is no marital breakdown you do not need a MRP law in a perfect world, but we know that is not the reality. There are factors that contribute to family break downs, family violence is one and as a community is this something that you want to have a discussion about and look at could we improve the service programs.

**LONNY:** Presently in the Criminal Justice System when there is a allegation of violence, of course the person who committed the violence gets taken out of the family home, has to go through a bail hearing process. It is always the case now that before that person gets out they have to under take in the court that they will not return to the family home, until the matter is dealt with in the accordance of the law. That could take sometime before that is done, so there is provision in the Criminal Justice System. The Attorney General in the past years has gotten a lot of egg on her face, because people were released from custody and there wasn't any conditions imposed upon them and they went back into the family home and seriously assaulted the spouse or killed her. So there was serious pressure on them to toughen up the laws. The Criminal Justice System has pretty much taken care of that, but you see people just ignore that. They say well honey I didn't really mean to call the police on you and they just sneak them back into the home, which happens all the time too. I think it is pretty much taken care of, my own feeling from the Criminal Justice side.

**HELEN:** I agree, because we know not all marriages break up because of family violence. What we going to do about cheating? Are we going to do something about that too? There are services, if it is family violence there is already something there. I don't have a problem with the services, although I know people have a problem accessing them, because I know a lot of people don't like to use them. I think one of the best things we can do, is teach our children not to be abusive. Teach our children to respect women and men so they don't be abusive. That is the starting point.

**LONNY:** I think that is up to the politicians. I would say yes, INAC should be putting more money towards resources, so that people can have access to justice. Even if we implement our own law on Matrimonial Real Property, there should be something in place. In a lot of situations people would want to use lawyers, but there should be some kind of program put in place like a court worker system or where people would have independent means of getting legal advice or legal help in certain areas. I think INAC should be the ones who front the money for all of these things.

**COMMENT:** I am assuming that must be an interim statement, because if we are going to have this tribunal, would that not address this particular aspect?

**RICHARD:** If the way it is designed encompasses it then yeah. If we make sure all of the other communities are in the same place too and we also provide the support for it. The then the answer is yes.

**HELEN:** I thought if we were going to have this tribunal and people went to the tribunal, are we going to need lawyers to go to this tribunal? I didn't think so. First Nations really back in history we didn't use lawyers, did we? I just figured that if people didn't settle it themselves and went to this tribunal, I didn't see them to having lawyers sit there.

**RICHARD:** The reason you have Lawyers is to interpret different laws and we are talking about passing our own law and you need someone to interpret it. It might be as simple as having local people or community people with that expertise to provide explanation of it, but it is our law that needs to be interpreted. I don't know if they have to be full fledged, Called-to-the- Bar Canadian lawyers, but someone will need to help with that.

**COMMENT:** I agree with what you are saying, there maybe individuals that don't really understand once this law is made, so at some point they would need a representative that would help them. It may not be a lawyer, but be called a representative.

**CARL:** The two parties would need somebody like a mediator to explain the process and how they could benefit or not benefit. I think it is a mediator that we should be looking at, because if everybody remembers at the beginning if you can work it out you don't need to go through the process, a mediator could solve a lot of that.

**[Seemed to be consensus not to include this section in the Rolling Draft]**